

7 Am. Jur. 2d Automobile Insurance § 93

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Automobile Insurance

Barbara J. Van Arsdale, J.D.; James Buchwalter, J.D.; Lonnie E. Griffith, Jr., J.D.; Janice Holben, J.D.; Sonja Larsen, J.D.; Anne E. Melley, J.D., LL.M., of the staff of the National Legal Research Group, Inc.; Mary Babb Morris, J.D., of the staff of the National Legal Research Group, Inc.; and Karen L. Schultz, J.D.

III. Risks and Harms Coverage

A. In General

2. Construction of Terms for Purposes of Coverage or Exclusion

b. Other Terms

§ 93. Motor vehicle operator and driver as construed

[Topic Summary](#) | [Correlation Table](#) | [References](#)

West's Key Number Digest

West's Key Number Digest, [Insurance](#)  2677

A.L.R. Library

[Meaning of “operate” or “being operated” within clause of automobile liability policy limiting its coverage, 51 A.L.R.2d 924](#)

Treatises and Practice Aids

For uses or causes of loss within coverage, generally, see Couch on Insurance 3d, Uses or Causes of Loss Within Coverage Generally [[Westlaw®\(r\): Search Query](#)]

Trial Strategy

The term “operate,” with regard to motor vehicles, as used in the coverage or exception provisions of automobile insurance policies, is not synonymous with the term “use,”¹ and has been defined to mean to regulate and control the actual operation of the car—that is, to have charge of it as the driver.² The term “operation” refers to the manipulation of the automobile's controls,³ and involves the driver's direction and control of the vehicle's mechanism for the purpose of propelling it as a vehicle.⁴ However, there is also authority to the effect that the term is not limited to direct physical control of the vehicles, such as cases expressing the view that a vehicle may be “operated” within the meaning of an automobile insurance policy by one who is in the vehicle and exercising some control over it, although not in the driver's seat.⁵ Under this view, the term “operator” reasonably includes a passenger who grabs the steering wheel of a moving car.⁶

The word “operated,” as used in an automobile insurance policy, has been said to be employed to describe the relationship between the individual and the automobile, and as meaning “driven.”⁷ However, “operating” and “driving” have been distinguished in other cases. Thus, to “operate” a motor vehicle under a state statute providing for the priority of insurance when a motor vehicle is being operated has been said to be not restricted to a narrow definition meaning only to “drive,” but rather as also meaning to be in physical control of the vehicle.⁸ For example, one who is driving a car is not “operating” the vehicle where the owner of the car is present in the vehicle at the time of the accident.⁹

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Footnotes

- 1 § 88.
- 2 *Orth v. Universal Underwriters Ins. Co.*, 284 F.2d 857 (9th Cir. 1960) (applying Washington law); *Schaffer v. Mill Owners Mut. Ins. Co.*, 242 Or. 150, 407 P.2d 614 (1965).
An indorsement providing that coverage was effective only when the vehicle was being “operated” by the named insured contemplated that the vehicle should be in actual physical control of the named insured and did not extend to the named insured's entrustment of the vehicle to another person. *Brown v. Ohio Cas. Ins. Co.*, 63 Ohio App. 2d 87, 17 Ohio Op. 3d 267, 409 N.E.2d 253 (8th Dist. Cuyahoga County 1978).
- 3 *Indemnity Ins. Co. of North America v. Metropolitan Cas. Ins. Co. of N. Y.*, 33 N.J. 507, 166 A.2d 355 (1960).
- 4 *State Farm Mut. Auto. Ins. Co. v. Liberty Mut. Ins. Co.*, 883 S.W.2d 530 (Mo. Ct. App. E.D. 1994).
- 5 *Lumbermens Mut. Cas. Co. v. McIver*, 110 F.2d 323 (C.C.A. 9th Cir. 1940) (applying California law); *Trans-Continental Mut. Ins. Co. v. Harrison*, 262 Ala. 373, 78 So. 2d 917, 51 A.L.R.2d 917 (1955).
- 6 *North Pacific Ins. Co. v. Christensen*, 143 Wash. 2d 43, 17 P.3d 596 (2001).
- 7 *Orth v. Universal Underwriters Ins. Co.*, 284 F.2d 857 (9th Cir. 1960) (applying Washington law).
- 8 *Cole v. Standard Fire Ins. Co.*, 179 Ariz. 494, 880 P.2d 714 (Ct. App. Div. 2 1994).
As to apportionment and contribution among automobile insurers, generally, see §§ 530 to 545.
- 9 *Mayflower Ins. Exchange v. Kosteriva*, 84 Idaho 25, 367 P.2d 572 (1961) (holding that a restrictive endorsement excluding coverage of the automobile when “operated” by a member of the armed forces was ambiguous and was to be construed in favor of the insured, so that a member of the armed forces who was driving while the owner, who, being intoxicated and unable to drive occupied the rear seat, was not “operating” the vehicle at the time of the accident).